

1                   IN THE UNITED STATES DISTRICT COURT  
2                   WESTERN DISTRICT OF TENNESSEE

----- X

3                   UNITED STATES OF AMERICA : NO. 10-CR-20194 (SHM)  
4                   PLAINTIFF, :

5                   :

6                   VS. : UNITED STATES COURTHOUSE  
7                   : MEMPHIS, TENNESSEE

8                   :

9                   WILLIAM HARNESS : JANUARY 26, 2012  
10                   DEFENDANT. : 10:00 A.M.

----- X

11                   CRIMINAL CAUSE FOR SENTENCING  
12                   BEFORE THE HONORABLE SAMUEL H. MAYS  
13                   UNITED STATES DISTRICT COURT JUDGE

-----

14                   A P P E A R A N C E S:

15                   FOR THE GOVERNMENT:                   U.S. ATTORNEY'S OFFICE  
16   FEDERAL BUILDING  
17   167 NORTH MAIN, STE. 800  
18   MEMPHIS, TENNESSEE 38103  
   BY: JERRY KITCHEN, ESQ.

19                   FOR DEFENDANT HARNESS:                   FEDERAL PUBLIC DEFENDER  
20   200 JEFFERSON, STE. 200  
21   MEMPHIS, TN 38103  
   BY: DAVID BELL, ESQ.

22                   NICOLE M. WARREN, RMR, CRR  
23   OFFICIAL REPORTER

24                   Proceedings recorded by computerized stenography  
25                   Transcript produced by Computer-aided Transcription.

1                   E X H I B I T    I N D E X

2                   EXHIBIT NUMBER

RECEIVED

3                   Exhibit No. 1      DVD

51

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (In open court; all counsel and  
2 Defendant William Harness present.)

3 THE COURT: United States against William  
4 Harness.

5 Mr. Kitchen, Mr. Bell.

6 Are you ready to go forward, Mr. Kitchen?

7 MR. KITCHEN: Yes, sir, your Honor.

8 THE COURT: Are you ready, Mr. Bell?

9 MR. BELL: Yes, your Honor.

10 THE COURT: Let us proceed. Okay.

11 Mr. Bell, you've reviewed the presentence  
12 report in this case and filed your position; is that  
13 correct?

14 MR. BELL: That's right, your Honor.

15 THE COURT: Mr. Kitchen, you have reviewed the  
16 presentence report and filed your position; is that  
17 correct?

18 MR. KITCHEN: Yes, sir, your Honor.

19 THE COURT: Mr. Harness, have you reviewed the  
20 Presentence Investigation Report in your case?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Have you discussed it with your  
23 attorney?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you have any objection to the

1 report, Mr. Kitchen?

2 MR. KITCHEN: No, your Honor.

3 THE COURT: What about the facts, Mr. Bell? Do  
4 you have any objections to the Presentence Investigation  
5 Report as filed with the Court?

6 MR. BELL: Your Honor, the only, if you recall  
7 from the position paper, the only thing I had an issue  
8 with is really a distinction without a difference.

9 THE COURT: What about the facts? Are there  
10 factual issues?

11 MR. BELL: Not in terms of the facts of this  
12 case, no, your Honor.

13 THE COURT: All right. Well, are there factual  
14 issues in terms of the facts stated in the presentence  
15 report?

16 MR. BELL: We do not dispute that those are the  
17 facts that the officers have alleged in the Davidson  
18 County case.

19 THE COURT: All right.

20 MR. BELL: Does that make sense, your Honor?  
21 I'm trying to be as clear as I can.

22 THE COURT: You do not dispute the facts as  
23 stated in paragraphs 22 and 23.

24 MR. BELL: Your Honor, that case is still  
25 pending in Davidson County.

1                   THE COURT: Well, I understand that. I'm just  
2 asking you a straightforward question. Do you dispute the  
3 facts or not?

4                   MR. BELL: I do not dispute that those are the  
5 facts that the police officers have stated.

6                   THE COURT: All right. There's no dispute  
7 about the facts in paragraphs 22 and 23. Therefore, the  
8 Court will accept the Presentence Investigation Report as  
9 its findings of fact.

10                  What about the guideline calculations,  
11 Mr. Bell?

12                  MR. BELL: No objection, your Honor.

13                  THE COURT: The Court will adopt the guideline  
14 calculations of the presentence report as its conclusions  
15 of law.

16                  What about acceptance, Mr. Kitchen?

17                  MR. KITCHEN: We agree to the third level of  
18 acceptance, your Honor.

19                  THE COURT: You move for the third level?

20                  MR. KITCHEN: Yes, sir.

21                  THE COURT: That's granted.

22                  We're under the 2011 Guideline Manual,  
23 Mr. Bell?

24                  MR. BELL: We are, your Honor.

25                  THE COURT: Mr. Kitchen?

1 MR. KITCHEN: Yes, sir.

2 THE COURT: Probation?

3 PROBATION OFFICER: Yes, your Honor.

4 THE COURT: All right. So, that's 57 to 71  
5 months of custody based on a Total Offense Level 23;  
6 Criminal History Category III; supervised release not less  
7 than three years; supervise -- well, fine \$10,000 to  
8 \$1 million; restitution not applicable; mandatory special  
9 assessment of \$100.

10 Is that your understanding of where we are,  
11 Mr. Bell?

12 MR. BELL: Yes, it is, your Honor.

13 THE COURT: Mr. Kitchen?

14 MR. KITCHEN: Yes, sir.

15 THE COURT: Probation.

16 PROBATION OFFICER: Yes, your Honor.

17 THE COURT: All right. Mr. Bell, we've  
18 established, I think, we're under the 2011 Guideline  
19 Manual.

20 MR. BELL: That's right.

21 THE COURT: All right. Let's go.

22 MR. BELL: First of all, good morning, your  
23 Honor.

24 THE COURT: Good morning to you.

25 I've already said good morning to you. Am I

1 supposed to say good morning to you twice?

2 MR. BELL: I don't know that I have, your  
3 Honor. So, I just wanted to make that sure I greeted you  
4 properly, your Honor.

5 And may it please the Court --

6 THE COURT: I feel properly greeted.

7 Go ahead.

8 MR. BELL: Thank you, your Honor.

9 Before we get started, I wanted to point out  
10 that there is a large crowd here for Mr. Harness; and I  
11 wanted to give your Honor some of the names. I'm going to  
12 be emailing all of the full names to the court reporter  
13 later just to make sure that she gets everything, but in  
14 the audience today we have Jason DeFord who is a best  
15 friend of Mr. Harness.

16 We have his daughter, Brianna; his son, Little  
17 William; his daughter, Innocense; and his daughter,  
18 Curtisee; and then his son, Little Waylon. They're all  
19 here before the Court. Those his five children that I  
20 know the Court is well aware of from the presentence  
21 report and the position paper.

22 We also have his wife here, Ms. Candace  
23 Harness. She's in the front row closest to the aisle with  
24 one of their children.

25 We also have, interestingly -- I think the

1 Court should take note of this -- we have Stephanie Hayes  
2 here who is the mother of Mr. Harness's first two  
3 children; and she's come here in support as well.

4 We also have some other friends and cousins.

5 Cody Hess is a friend who's here. Nicole Tinin is a  
6 cousin who's here. Belinda McCoy is a friend. Ashley  
7 Minguez is a friend who also is one of the individuals who  
8 had sent a letter in that I filed as one of the  
9 attachments to the position paper.

10 We have Hector Reyes and Edward Crowe, both of  
11 whom submitted letters as well; Chris Gray who's a friend  
12 as well; Tiffany Stacey who's a friend; Melissa Cowell  
13 who's a friend.

14 And we actually have an individual named Junior  
15 Stewart who is here. He's back in the middle in the blue  
16 shirt who Mr. Harness doesn't know but who is simply a fan  
17 of him as a musician, who just decided to come for the  
18 hearing today.

19 So, we have quite a bit of family and friend  
20 support who are here for Mr. Harness.

21 THE COURT: Well, welcome to all of you. It's  
22 a pleasure to have you in court this morning. Thanks for  
23 coming.

24 Go ahead, Mr. Bell.

25 MR. BELL: Yes, your Honor.

1                   Your Honor, Mr. Harness stands before you as an  
2 individual who committed the crime that he's been charged  
3 with. As you know, he not only told the Court when he  
4 came in and pled guilty but he also told the police when  
5 they were interrogating him and he told the probation  
6 officer when we did our interview that he was guilty of  
7 this crime and that he committed this crime.

8                   There is no issue about whether he -- whether  
9 he did this or not. Of course, we know that the crime  
10 involves the attempted purchase of a number of Oxycodone  
11 pills. Oxycodone, as your Honor knows, is a drug that for  
12 a long time was simply used for pain relief but in  
13 increasing years has been used by people in more of a  
14 recreational fashion.

15                  As your Honor knows from reading the  
16 presentence report, Mr. Harness told the probation officer  
17 that he's had a long history of taking Oxycodone, sort of  
18 a self-medication, and that he is addicted to that drug.

19                  It all started in terms of the drug and the  
20 substance abuse issues probably back at the point where  
21 Mr. Harness was an adolescent boy and his father, when he  
22 was age 11, Mr. Harness was age 11, committed suicide.  
23 While his relationship with his father had been tenuous at  
24 best and he had had an on-and-off-again relationship with  
25 him, that incident, that event in his life seemed to spark

1 something where Mr. Harness started to experiment with  
2 alcohol, experiment with marijuana, argue with his mother,  
3 have issues back and forth, and ended up in a situation  
4 where by the time he was 16, between 16 and 17 years old  
5 he was living with an uncle, he was getting in some  
6 trouble with the juvenile authorities, and he was using  
7 drugs.

8                   This continued for a period of time until he  
9 began to get arrested as a young adult; and as your Honor  
10 knows, he got some misdemeanor charges. He was charged  
11 with possession of a weapon charge, theft of property  
12 charge, some misdemeanor drug charge; and then he received  
13 a sentence for a felony drug charge when he was about  
14 20 years old.

15                   And at that point he was a young man who was  
16 using drugs on a regular basis, who was getting in trouble  
17 with the law, and who was sent to prison; and he was  
18 pretty much in a position of trying to figure out how to  
19 turn things around.

20                   And the good part of this aspect of the story  
21 is that he started taking some classes. He took domestic  
22 violence classes and completed a program. He went and  
23 took a substance abuse program and completed a certain  
24 portion of that and then was doing well.

25                   And after release, Mr. Harness began to work

1 and he worked first for a -- at a -- in a country club as  
2 sort of an apprentice to a chef there where he learned how  
3 to run banquets and he learned how to cook and he learned  
4 how to be a chef. After that, he was hired to be a  
5 restaurant kitchen manager at a place called I believe it  
6 was Joe's Diner, if I'm not incorrect.

7 THE DEFENDANT: (Nods head affirmatively.)

8 MR. BELL: So, we have this person who is  
9 really struggling in his early times and is sent to  
10 prison. When he gets out, he starts to work and he starts  
11 to do well and he's staying off of the drugs and he is  
12 starting to form a life, a productive life, and he spends  
13 four or five years doing this and it works really well.

14 But there was something more in Mr. Harness'  
15 background where he had this love for music. Part of it  
16 is probably based on his family, his exposure to music.  
17 Part of it was based on his talent, and he was signed to a  
18 record contract I believe in 2006.

19 THE DEFENDANT: '8. 2008.

20 MR. BELL: I believe the first record  
21 contract --

22 THE DEFENDANT: Yeah, 2006.

23 MR. BELL: -- was 2006 with the original record  
24 company, the one that was -- that went bankrupt.

25 And he began to get involved in the record

1 industry and the music industry and, of course, we know  
2 Mr. Harness is from around the Nashville area and we know  
3 that he was -- he was a person who actually got signed as  
4 an artist.

5 Of course, along with being signed as an  
6 artist, he was required to go start making recordings and  
7 start touring and playing shows; and unfortunately for  
8 Mr. Harness and for his family, he fell back into his old  
9 pattern of substance abuse. He started to use these pills  
10 again, most specifically oxycodone, the same pill that is  
11 involved in this case.

12 It's unfortunate because, while on the one hand  
13 Mr. Harness was being very successful and trying to be a  
14 good, a good recording artist and be a successful  
15 musician, he was struggling in his personal life with this  
16 addiction. Yet at the same time he was also helping to  
17 support his first two children and he was starting a  
18 family where he had three more children as well.

19 So, it's a difficult situation because  
20 Mr. Harness has been successful. He's done some really  
21 great things and we know that he can be a successful and  
22 productive member of society but when he was first exposed  
23 to the music industry, he fell back into that same pattern  
24 of substance abuse that he had been in before.

25 Where that substance abuse comes from it's hard

1 to really define. I'm certainly not a psychiatrist or a  
2 psychologist by any stretch of the imagination, but I  
3 would say that it is telling that after his father's  
4 suicide he starts to use substances on a regular basis. I  
5 would say that the struggles that he went through when he  
6 was first growing up were -- probably had some sort of  
7 impact on it as well.

8                   Of course, we recounted both in the position  
9 paper and the presentence report how his mother was a  
10 strong, independent woman who basically raised her mostly  
11 by herself -- raised him mostly by herself. While she had  
12 available to her probably any number of resources, having  
13 as her stepfather the famous Waylon Jennings, a country  
14 musician, on the other hand she was so independent that  
15 she really didn't want to accept any help.

16                   So, Mr. Harness would flip back and forth  
17 between going to visit his famous relatives who had lots  
18 of money and were very wealthy and then going back to  
19 where his mother lived in more impoverished settings in  
20 the trailer park and places like that and sometimes  
21 Government type housing.

22                   It's this strange dichotomy that Mr. Harness  
23 was exposed to at a very early age. So, somewhere along  
24 the way we know from looking at the presentence report  
25 that Mr. Harness when he was in cus -- incarcerated as a

1 young man was diagnosed with Posttraumatic Stress  
2 Disorder, although he was never actually treated for that.

3 So, what I would submit to the Court that part  
4 of what Mr. Harness may have been doing was trying to  
5 self-medicate by using some of these drugs because of the  
6 issues that he had had in the past and the mental health  
7 diagnosis that he had gotten and that Posttraumatic Stress  
8 Disorder probably had a lot to do with his father and it  
9 had a lot to do with his family upbringing.

10 All that being said, none of these are excuses  
11 for why Mr. Harness committed this crime. He committed  
12 this crime because he was a drug addict, because he wanted  
13 to buy these pills; and he was the one who talked to the  
14 undercover agent or the CI, as it might be said. He was  
15 the one who arranged the deal, and he was the one that had  
16 someone drive him there to purchase these pills. There's  
17 no putting that on someone else. There's no allegation  
18 that he was not competent in the time when that happened.  
19 He did this, and he is going to be punished for it. We  
20 know that.

21 But we know that Mr. Harness not only can be  
22 successful -- he's signed to a record contract, is paid  
23 regularly -- but also that he has a family and friends  
24 that support him greatly and you can see that by seeing  
25 them all here today.

1                   And we know that when he was originally  
2 arrested on this case, as you -- as your Honor knows from  
3 the Pretrial Services Report that was originally submitted  
4 but also the one that was submitted just a couple of days  
5 ago, the pretrial services in Nashville told the Court --

6                   THE COURT: What do you mean the one that was  
7 submitted a couple of days ago?

8                   MR. BELL: We just had one that was filed a  
9 couple of days ago.

10                  THE COURT: What was that one? Are you talking  
11 about the addendum?

12                  MR. BELL: I'm sorry. I'm talking about the  
13 pretrial services report, not the presentence report.

14                  THE COURT: Oh, you're talking about  
15 Document 50 that was filed on the 24th.

16                  MR. BELL: That's right, Your Honor, a couple  
17 of days ago.

18                  THE COURT: All right.

19                  MR. BELL: Yes, your Honor. I apologize for  
20 not --

21                  THE COURT: No, you made it clear. I just  
22 didn't understand you.

23                  MR. BELL: Okay. But one of the interesting  
24 things about that document was that pretrial services said  
25 that after he had been arrested originally on this case

1 that they had submitted him over to go to substance abuse  
2 treatment and that he had been faithfully going to that  
3 treatment and he had been faithfully testing negative for  
4 controlled substances.

5 So, what that should show the Court is that he  
6 had the ability under the right scenario with the correct  
7 supervision to stay clean and to continue to support his  
8 family.

9 Now, I would submit again I know your Honor has  
10 received the letters. I have an extra copy of the letters  
11 that were submitted with the position paper, if I could  
12 submit those.

13 THE COURT: Unless you have --

14 MR. BELL: There's nothing different.

15 THE COURT: I've read them all.

16 MR. BELL: Thank you, your Honor.

17 And the letters outline an individual that many  
18 people, some here but many others including the former  
19 interim director of the Tennessee Sheriff's Association  
20 and other individuals, really think he has a lot of  
21 potential and has been a good friend and a good father.

22 That kind of support should show your Honor  
23 that the community believes that Mr. Harness can still be  
24 a productive member of society both during his punishment,  
25 what he receives for his sentence, but also afterwards.

1                   And I would just point out that the Court often  
2 looks at an individual certainly from the presentence  
3 report and when reading the allegations -- and in this  
4 case they aren't just allegations. They are facts. He  
5 did commit this crime. This was a crime that involved  
6 trying to buy pills, involved trying to buy drugs.  
7 There's no allegation that a firearm was possessed here.  
8 There's no allegation that any crime of violence was  
9 enacted here. It was an attempted drug purchase.

10                  I also want to point out to the Court that  
11 Mr. Harness is more than just the perpetrator of this  
12 crime. He's a father and he's a husband and he's an  
13 individual who cares for his family and supports his  
14 family and who has people to stand up for him.

15                  So, I'd ask your Honor to take all that into  
16 consideration when determining the correct sentence.

17                  Of course, I believe that Mr. Harness is an  
18 individual who could benefit well from an alternative to  
19 incarceration. I believe that the Court can construct an  
20 alternative to incarceration that would allow him to  
21 continue working and supporting his family while being  
22 monitored heavily by pretrial -- by the probation office,  
23 have him regularly going to substance abuse classes, have  
24 him on electronic monitoring where the Court is able to  
25 know when and where he leaves his house and where he's

1 going and get approval for those types of things, and also  
2 the possibility of going to a halfway house.

3                   In addition, I would say that something along  
4 the line of a class in Moral Reconation Therapy would be a  
5 good idea for Mr. Harness because it would help him to  
6 realize about good and bad decision-making. I think that  
7 since he has -- that a person with five children who has  
8 to support those children can always be reminded of those  
9 things.

10                  It's up to the Court and I ask that the Court  
11 listen to the witness -- we have a few witnesses who just  
12 want to make statements -- but also to Mr. Harness to  
13 determine whether he really accepts responsibility for  
14 this and what the proper sentence should be.

15                  THE COURT: Go ahead.

16                  MR. BELL: If I could call Ms. Candace Harness.  
17                  Should I get the microphone, your Honor?

18                  THE COURT: That's fine. The microphone I'm  
19 sure would be helpful.

20                  You have to turn it on.

21                  I forgot your extensive experience with  
22 microphones.

23                  MR. BELL: I do, your Honor. Thank you.

24                  (Candace Harness approaches.)

25                  THE COURT: Good morning.

1 MS. HARNESS: Good morning.

2 THE COURT: Tell me your name.

3 MS. HARNESS: Candace Harness.

4 THE COURT: How do you spell your name?

5 MS. HARNESS: C-a-n-d-a-c-e, H-a-r-n-e-s-s.

6 THE COURT: All right. What do you have to  
7 say, Ms. Harness?

8 How are you related to the defendant?

9 MS. HARNESS: He's my husband eight years now.

10 Um, he's just the best man I know. He's always been  
11 committed to me and his children and his career and he's  
12 just a really great guy and there's not many great men out  
13 here and he is one of those men.

14 He made mistakes and, um, I agree he should  
15 learn from those mistakes but, above all, he is a  
16 wonderful person and I'm not just saying that 'cause he's  
17 my husband. He's just -- he's just that guy. He's a  
18 wonderful person.

19 THE COURT: Thank you, Ms. Harness.

20 MS. HARNESS: You're welcome.

21 Thank you, your Honor.

22 (Candace Harness returns to the gallery.)

23 MR. BELL: Your Honor, I'd also like to call  
24 Stephanie Hayes.

25 (Stephanie Hayes approaches.)

1 THE COURT: Good morning, Ms. Hayes.

2 MS. HAYES: Good morning.

3 THE COURT: Now, tell me how to spell your  
4 name.

5 MS. HAYES: S-t-e-p-h-a-n-i-e, H-a-y-e-s.

6 THE COURT: Okay. What do you want to say?

7 MS. HAYES: He's just such a good person, he's  
8 such a good dad, and he's always committed to his family  
9 and his kids. And we have such a good relationship, me  
10 and him and me and his wife and his other three children.

11 And I just ask that you can be as lenient as  
12 possible 'cause he's a really wonderful person.

13 THE COURT: Tell me about a little about  
14 your -- how do you know the defendant?

15 MS. HAYES: I have two children by him.

16 THE COURT: You're the mother of two of his  
17 children; is that right?

18 MS. HAYES: Yes, sir.

19 THE COURT: So, you've known him a long time.

20 MS. HAYES: Yes.

21 THE COURT: Anything else you want to tell me?

22 MS. HAYES: No, sir.

23 THE COURT: Thank you, Ms. Hayes.

24 MS. HAYES: Thank you.

25 (Stephanie Hayes returns to the gallery.)

1 MR. BELL: And, your Honor, finally we have  
2 Jason DeFord.

3 (Jason DeFord approaches.)

4 THE COURT: Good morning, Mr. DeFord.

5 MR. DeFORD: Good morning, Judge.

6 THE COURT: How are you this morning?

7 MR. DeFORD: I'm a little nervous.

8 THE COURT: Well, don't be.

9 MR. DeFORD: For the record, my name is Jason  
10 DeFord, D-e-F-o-r-d.

11 THE COURT: Capital F?

12 MR. DeFORD: Capital "F" actually. Thank you.

13 THE COURT: All right.

14 MR. DeFORD: That's why it's DeFord, not  
15 "Deford." My dad gets so mad about that.

16 THE COURT: Well, fathers are that way  
17 sometimes.

18 MR. DeFORD: He said our last name's all we're  
19 going to have when it's all said and done.

20 THE COURT: So, how do you know the defendant?

21 MR. DeFORD: He's been my best friend for about  
22 a decade.

23 THE COURT: Okay. What do you want to tell me?

24 MR. DeFORD: Your Honor, I can sit up here and  
25 name a lot of attributes. We could pass this microphone

1 around, and none of us are gonna say nothing you don't  
2 expect us to say.

3                   But of all the stories we could tell about Will  
4 Harness and all the things we know about his drug  
5 addiction and his problems, one story you won't hear is  
6 him being a bad father; and I don't mean a man that throws  
7 money at a kid. I mean a man that wakes up every day and  
8 takes them to school. Every one of them kids know  
9 everything about their daddy from his smile to every  
10 tattoo on his body. There's just not many fathers like  
11 that.

12                   I was blessed to have one, but I know everybody  
13 else in this courtroom with me didn't.

14                   That's all I have.

15                   THE COURT: Thank you, Mr. DeFord.

16                   (Jason DeFord returns to the gallery.)

17                   THE COURT: Mr. Bell.

18                   MR. BELL: Your Honor, I know Mr. Harness wants  
19 to address the Court. Then we have a short DVD to play.

20                   THE COURT: All right. I'd just as soon have  
21 the video before Mr. Harness allocates -- allocutes.

22                   MR. BELL: Yes, your Honor.

23                   (DVD played in open court.)

24                   MR. BELL: Your Honor, Mr. Harness.

25                   THE COURT: What's that?

1 MR. BELL: Mr. Harness.

2 THE COURT: Mr. Harness, do you wish to be  
3 heard on your own behalf?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Go forward.

6 THE DEFENDANT: I'm choked up from everybody  
7 talking.

8 Um, I know I made some bad decisions. I made  
9 some mistakes and I know that I have to pay the  
10 consequences for them and I'm completely at peace with  
11 that. Just ready to get home and be a father, a husband,  
12 a better one and just move on from this, tell my story so  
13 others, you know, won't hopefully make the same decisions  
14 I've made, the same mistakes, and give my children what I  
15 didn't have. That's a father.

16 THE COURT: Mr. Kitchen.

17 MR. KITCHEN: Your Honor, this case is simply  
18 not any different than I would submit that the Court has  
19 not heard time and time again.

20 The defendant is a little different in one  
21 respect. He has numerous people here to support the  
22 defendant. He does appear to have come from a good family  
23 in that he has had support from his family. He has had  
24 financial support, it appears. He is not someone who has  
25 come from the projects or someone who's come from a

1 background where he is not privileged. He is an  
2 individual who has family support, children, someone that  
3 he has a reason to live and succeed and to take care of  
4 his family.

5 As you've heard, he has individuals that depend  
6 on him and yet this defendant from a juvenile, it appears  
7 from his report, has chosen to commit crimes time and time  
8 again. It would be interesting to note the number of  
9 times that these individuals -- and I don't disparage the  
10 family because the family's family. They're the ones that  
11 pay the price, it appears, all the time when loved ones go  
12 to jail or who's in trouble.

13 They come to court, whether it's state court or  
14 Federal court, they come to court time and time again and  
15 beg for mercy because they don't want their loved one to  
16 go to jail and they come and tell how good a person the  
17 defendant is. Each time he gets in trouble, they bail him  
18 out. They pay the money to get him out of jail. He goes  
19 back and continues to violate the law.

20 This defendant's been in trouble time and time  
21 again and yet it'd be interesting to note how many times  
22 this defendant's family has come and told the judge every  
23 time that he's been in trouble he's really a good person.  
24 He has a good family. He takes care of his family. We  
25 love him. He's good person. He takes care of his kids.

1 He's a good father. He knows his family well. His kids  
2 just, as Mr. DeFord said, he -- he knows all about them.

3 I'm sure he is a good father but they're the  
4 ones that are going to suffer and it's unfortunate. They  
5 always are the ones that suffer and we hear the sad  
6 stories about how they're going to suffer and they put it  
7 on the judge, they put it on the Court to make the Court  
8 feel as if it's going to be the Court's fault that the  
9 Court's going to sentence this man to jail instead of it's  
10 the defendant's fault.

11 It's the defendant's fault why he's standing  
12 here, not the Court's fault; but the family wants the  
13 Court to feel like now if the Court sends the defendant to  
14 jail, then it's your fault.

15 Well, no, it's the defendant's fault. He  
16 shoulda learned his lesson back when he was 16 after he  
17 was arrested for aggravated assault and aggravated  
18 kidnapping when they took him to juvenile court and he got  
19 in trouble and that petition was sustained and the Court  
20 lectured him then, I'm sure, and his family was present  
21 but he didn't. He got in trouble again.

22 And then as a juvenile he was arrested again  
23 and he got in trouble again and a petition was sustained.

24 No, but he continued again. He got arrested  
25 again for unlawful possession of a weapon and he was

1       convicted of that and that weapon was -- he was in a  
2       vehicle that was suspected in a robbery. This defendant  
3       went down a different path. Not only was that vehicle  
4       that he was in was suspected of a robbery but there was a  
5       loaded handgun in that vehicle when he was 18. He didn't  
6       stop then.

7               He then was arrested for burglary of a motor  
8       vehicle and theft of property. I'm sure those people that  
9       were victims of that crime would be here, too, wanting to  
10       know, well, now that he's continued on this life of crime,  
11       what's happened to Mr. Harness? Why isn't he paying the  
12       price? Is it just that the family has to come in here and  
13       beg for mercy and nothing continues to happen to  
14       Mr. Harness? Because nothing so far has happened to  
15       Mr. Harness.

16               But then in 1999 when he got this burglary of a  
17       motor vehicle, what'd they do? They just gave him a  
18       misdemeanor. How much time did he serve then, or did the  
19       family come in and beg for mercy then and say that he was  
20       a good person then?

21               Then after that, then what does he do? He goes  
22       to selling drugs. He gets caught for possession of a  
23       controlled substance with intent to sell, and he gets a  
24       misdemeanor again. Did the family come in and beg for  
25       mercy then? We don't know.

1                   But I know in state court that's what happens.  
2 The family comes in. They have a probation hearing. You  
3 come in and ask for probation. You get probation.

4                   But then in this particular case, Judge, after  
5 he was put on probation, it's revoked. It's revoked after  
6 the defendant was charged with selling Lortab and he had  
7 brass knuckles and he also had a weapon in that charge as  
8 well. So, this defendant was not just an individual.  
9 This is when he was 21 years of age. So, he wasn't just a  
10 juvenile. He wasn't just a young man. He was someone who  
11 knew better.

12                  He came from a family -- he knew better at that  
13 point and he was a man that was on his way, knowing that  
14 he had a family. He knew better. He knew he needed to be  
15 on the right path but he chose to continue to sell drugs  
16 and he was carrying weapons while he was selling drugs but  
17 yet he gets a misdemeanor.

18                  If the law had been strong on Mr. Harness at  
19 that time, maybe he wouldn't be here today; but they  
20 slapped him on the wrist. Then while he got slapped on  
21 the wrist, his probation is violated.

22                  He then didn't learn his lesson from that. He  
23 then goes out and commits more crimes. He's arrested  
24 again for possession of a weapon again. So, jail didn't  
25 teach him a lesson even after being revoked again.

1                   He gets arrested again. A capias is issued for  
2 him for failure to appear.

3                   He then back in 2001 in December he's arrested  
4 while he's on probation. So, even the rules that the  
5 judge told him while he was on probation didn't mean  
6 anything to Mr. Harness. The law didn't mean anything to  
7 Mr. Harness. He just continued to do as he pleased.

8                   He's arrested then for selling marijuana and  
9 reckless endangerment. Instead of Mr. Harness realizing  
10 that committing -- violating the law is a serious  
11 business, what does he do? He flees from the police, and  
12 he could kill somebody. And what happens to him then? He  
13 gets three years. He's selling marijuana at this point  
14 and he's fleeing from the police and he sold five Lortab  
15 pills and a quarter pound of marijuana to an undercover  
16 agent.

17                   So, not only does Mr. Harness come in here and  
18 try to -- and Mr. Bell tells the Court, well, he's not  
19 giving us excuses. That's exactly all he's doing is  
20 giving this Court excuses of why he was committing crimes.  
21 He was a drug dealer. That's what he is is a drug dealer  
22 but he comes in here and wants to give the Court this sob  
23 story about his past life.

24                   Everybody has problems, but they don't use  
25 those problems to become a drug dealer and commit crimes.

1 They go get help, but they don't commit crimes because  
2 they have a hard life. They don't turn to going around  
3 and running from the police and selling drugs.

4 So, what did this defendant do? He then  
5 decides that he's going to sell some more Lortabs. He  
6 makes arrangements to sell thousands of Lortabs. He tells  
7 the undercover agent when he is making this particular  
8 deal, Judge, not that he's just some user but he tells  
9 this undercover officer that he makes five to \$10,000 a  
10 week and he's -- he needs five to 10,000 Lortabs.

11 And Mr. Bell indicated that this wasn't a  
12 violent crime. Well, we don't know he because he was  
13 arrested before it ended; but he'd indicated that he was  
14 going to snatch the pills from the informant because he  
15 didn't have enough money to pay for all the pills at this  
16 particular time.

17 Now, in addition, I know Mr. Bell had used this  
18 as an indicator of his cooperation; but Mr. Harness also  
19 did state as this is a favorable indication on the  
20 defendant's behalf that was his cooperation. Well, the  
21 defendant also stated that he knew how the system worked  
22 because he has done it in the past, that when he got  
23 arrested in the past that he used that by cooperating with  
24 the Government in the past by giving statements to law  
25 enforcement when he was arrested before.

1                   So, he knew how the system worked. So, he  
2 agreed to cooperate with the Government when he was  
3 arrested. So, that's -- so, he gave a statement.

4                   What else is even telling after that, your  
5 Honor, here he is arrested on this particular case with  
6 the DEA agent on a Federal case and then we have this  
7 relevant conduct offense where which occurred -- this  
8 offense occurred in March and here the defendant is now  
9 involved in another wiretap case that's taking place where  
10 there's recorded conversations with the defendant that's  
11 occurring between November 10th of 2010 and January 15th  
12 of 2011. That's just -- that's just recently. That's not  
13 that far off. That's not that far ago.

14                  And he's a changed man now? No, he's just  
15 here, telling the judge now what he needs to say. His  
16 family's telling the judge what he just needs to say so  
17 that he can get a leaner sentence.

18                  The only thing that's going to teach this  
19 defendant anything is just punishment, just deterrence,  
20 and a sentence that does not depreciate the seriousness of  
21 this offense.

22                  He has gotten away with it in the past and  
23 before and the only thing that's going to teach this  
24 defendant not to continue on his criminal ways is jail and  
25 that is a deterrent. That's what Mr. Bell indicated what

1       kept the defendant from using drugs before was that he  
2       knew if he tested positive, he would go to jail while he  
3       was on pretrial release.

4               And I would submit that he needs to be taught a  
5       lesson; and the only lesson that's going to do that is to  
6       send him to jail, that there's no more excuses.

7               THE COURT: Probation.

8               PROBATION OFFICER: I have nothing to add, your  
9       Honor.

10               THE COURT: Mr. Bell.

11               MR. BELL: November, 2002, to March, 2010, your  
12       Honor. November, 2002, is when Mr. Harness was released  
13       out of Davidson County from serving his sentence.  
14       March, 2010, is when this occurred. During that period of  
15       time there's nothing in the presentence report about any  
16       criminal activity aside from the allegations involved in  
17       Davidson County.

18               So, while Mr. Kitchen likes to come up and talk  
19       about my client's criminal history -- and he has one;  
20       there's no running from it -- there was a stretch of time  
21       there where Mr. Harness was not getting in trouble. So,  
22       the habitual offender that Mr. Kitchen wants to make my  
23       client out to be is not 100 percent accurate.

24               That being said, my client committed this  
25       crime. There was no firearm found in this crime. There

1 was no snatching of the pills. That never happened.  
2 There was no act of violence. That never happened. So,  
3 let's be straight about what actually happened.

4 All that being said, Mr. Harness did this and  
5 he will pay the punishment for it but the fact that he has  
6 a criminal history, the fact that he's been in trouble  
7 before does not take away that Mr. Harness is a person  
8 that can still be saved, is a person that can still be a  
9 productive member of society, is a person that can support  
10 his family, and is a person who has the kind of family  
11 support that can make him be a valued member of this  
12 community.

13 So, we'd ask your Honor to take that into  
14 account when determining what the proper sentence is.

15 Thank you.

16 THE COURT: This is the case of United States  
17 of America against William Harness.

18 Mr. Harness has pled guilty to Count One of the  
19 indictment against him, conspiracy to possess with intent  
20 to distribute oxycodone, a Schedule II controlled  
21 substance. That's a Class C felony. It's a violation of  
22, United States Code, Section 846.

23 The penalties for that offense are not more  
24 than 20 years in prison; not more than a 1 million-dollar  
25 fine; not less than three years of supervised release; and

1 there's a mandatory special assessment of \$100.

2 I've made all findings of fact necessary to  
3 apply the guidelines in this case. There is no dispute  
4 about the facts in this case, although there is some  
5 disagreement about the implications of the facts.

6 I've calculated the guideline sentencing range  
7 correctly. There's no dispute about the guideline  
8 sentencing range. I have the discretion to issue a  
9 sentence that varies from the guidelines. My goal is to  
10 impose a sentence that is sufficient but not greater than  
11 necessary to comply with the purposes of  
12 18, United States Code, Section 3553.

13 To that end, I am to consider the 3553 factors  
14 in exercising my independent judgment about what an  
15 appropriate sentence should be. I am limited in my  
16 discretion by the maximum statutory penalty for custody  
17 purposes which is 20 years in prison. I'm also limited by  
18 the minimum statutory provision for supervised release  
19 which is three years.

20 This is a very serious crime. Mr. Harness  
21 chose to become involved in the distribution of oxycodone.  
22 The record is clear that it was not the first occasion he  
23 had been involved in distributing oxycodone. Mr. Harness  
24 was the key player in this particular crime. He made  
25 arrangements for the purchase of the pills. He made that

1 arrangement with a confidential source. He recruited his  
2 friend to drive him to Memphis, Tennessee, to purchase the  
3 drugs. The friend, I believe, was Mr. Taylor.

4 In any event, Mr. Harness himself was not  
5 supposed to be driving because I think he didn't have a  
6 license. So, Mr. Taylor was the one who drove; and  
7 Mr. Harness also recruited his brother-in-law, I believe,  
8 Mr. Dile, D-i-l-e, who became involved in the matter as  
9 well.

10 They drove to Bartlett, Tennessee; went to a  
11 Wal-Mart; and at that point sought to purchase,  
12 Mr. Harness sought to purchase 400 Oxycontin pills. The  
13 exact role of Mr. Dile and Mr. Taylor here is unclear.  
14 There's some indication that Mr. Harness told them that  
15 they were all going down to Tunica, presumably to gamble;  
16 but, in fact, that's not what they were doing, although at  
17 the time of the arrest or thereabouts, Mr. Dile was in the  
18 Wal-Mart apparently with some money and returned with the  
19 money.

20 Now, the Oxycontin was obviously a substantial  
21 amount; and the cost of it was substantial as well. The  
22 original agreement was to purchase 500 Oxycontin pills for  
23 \$11,500. So, we have here a major drug transaction. This  
24 was not a crime of opportunity. That is, Mr. Harness  
25 didn't happen upon it or happen upon the occasion. He

1 created the occasion himself and drove over 200 miles to  
2 accomplish it or got someone to drive him over 200 miles  
3 to accomplish it.

4                   There was long planning. Mr. Harness was  
5 involved in arranging to purchase pills through repeated  
6 telephone calls over a period of weeks; and then finally  
7 the purchase was to be accomplished on May 31st, 2010.

8                   As to the other factors surrounding this crime,  
9 there's some suggestion of violence. The record does not,  
10 I think, support a specific finding that Mr. Harness had  
11 any violent intent. There doesn't appear to have been a  
12 firearm involved. As to snatching the pills, that appears  
13 to be somewhat ambiguous.

14                   Mr. Harness seems to have said he had a limited  
15 amount of money, perhaps \$800, and that he intended to  
16 snatch the pills. However, there's some question of  
17 whether he really had more money up to \$8800; but  
18 Mr. Harness did state his intention of snatching the pills  
19 in the undisputed facts at paragraph 16 of the presentence  
20 report.

21                   Whether he would have done that or not, I have  
22 no idea; and I can't determine from this record whether he  
23 would have. There is an aspect of this crime that in the  
24 civil law we used to call puffery. In other words, it's  
25 apparent that Mr. Harness had a tendency -- I don't want

1 to call it bragging but a tendency to exaggerate his  
2 activities and in a way his culpability. Not only is that  
3 reflected in part in paragraph 16 but you can find it at  
4 paragraph 7 where Mr. Harness said he was -- he could sell  
5 5,000 to 10,000 Lortab in a couple of days; 1,000 to 5,000  
6 Oxycontin, depending on the price of the pill.

7                   And he's quoted as saying, "It ain't nothing  
8 for me to make five or ten a week," meaning five or  
9 \$10,000 a week; but if he was making five or \$10,000 a  
10 week, he wouldn't be riding down to Memphis with \$800 in  
11 his pocket to buy some Oxycontin he couldn't afford. So,  
12 I'm assuming that he is unlikely to have been operating at  
13 that stage. That's what I call puffery.

14                   The kind of talk -- I've encountered it. I  
15 know Mr. Kitchen has, and I know Mr. Bell has. People who  
16 are dealing drugs will brag to one another to some extent  
17 what they're doing and how much money they have and how  
18 successful they are, and Mr. Harness was clearly dealing  
19 in drugs. He simply wasn't dealing in drugs at that  
20 level.

21                   So, we have a very serious crime. It's a crime  
22 that was planned and executed by Mr. Harness. He had some  
23 assistance from others, but that assistance was at least  
24 in part unknowing.

25                   There is no indication that he intended

1 violence; but unfortunately in drug transactions of this  
2 sort, violence often accompanies those transactions. Even  
3 though people don't set out to engage in violence, there  
4 are other people involved in the drug trade who do; and  
5 guns and drugs go together like love and marriage. That's  
6 simply how the drug trade operates.

7 Mr. Harness didn't have a gun apparently, but  
8 others well could have. So, by undertaking this  
9 transaction, Mr. Harness created a situation where there  
10 was a serious possibility of violence.

11 As to the relevant conduct, I consider the  
12 relevant conduct at paragraphs 22 and 23 only for the fact  
13 that Mr. Harness was arrested and as part of the overall  
14 process that he was arrested in that case; and what he was  
15 charged with, well, are simply facts, facts of which I can  
16 take judicial notice. He was indicted by a grand jury in  
17 Davidson County Criminal Court, and the grand jury of  
18 necessity found that Mr. Harness and others committed a  
19 crime. They found that there was probable cause to  
20 believe that he committed that crime.

21 Whether he committed that crime or not is not a  
22 matter before me. I consider the indictment and what's  
23 charged against Mr. Harness solely for the point of  
24 dealing with this case as a whole. I do not consider it  
25 as part of his sentencing, and the reason for that is I

1 don't have sufficiently reliable information before me  
2 about whether Mr. Harness committed this crime. So, I  
3 can't rely on it as part of relevant conduct.

4 Now, of course, Mr. Kitchen could put on proof  
5 about the crime, should he choose to do so, which he  
6 hasn't and he reasonably would not and I could decide by a  
7 preponderance of the evidence that Mr. Harness did this  
8 and consider it but I don't have that proof before me and  
9 so it's not appropriate for me to consider that.

10 It is troubling that he was arrested and  
11 arrested after this crime and it's troubling that it's a  
12 cocaine crime but, again, it is not something I will be  
13 considering in sentencing because it does not have  
14 sufficient reliability for me to consider it and -- well,  
15 that's enough. So, that's the crime.

16 Now, one of the reasons that I think every  
17 judge I've ever known says that this is the most difficult  
18 thing he or she does is that one comes to consider the  
19 human being before one, Mr. Harness, who's 31 years old.  
20 He has five children.

21 He has a significant criminal history. His  
22 history began when he was a young -- a child. It began  
23 when -- well, a young person. Let's say that. He was  
24 16 years old, and he had a complaint sustained in the  
25 juvenile court in Davidson County for aggravated assault.

1 He was charged with aggravated kidnapping, but the record  
2 shows that that was nolle prossed. So, it was an  
3 aggravated assault which is a serious crime.

4 He was charged again in the juvenile court in  
5 Nashville, the juvenile court for Davidson County, with  
6 vandalism; and that was sustained. Other matters were  
7 nolle prossed, but he was guilty of vandalism.

8 I don't know the nature of the aggravated  
9 assault or of the vandalism, but they're very serious  
10 matters.

11 His first adult conviction was when he was 18  
12 and he unlawfully possessed a weapon, a .9 millimeter  
13 semiautomatic handgun loaded with a round in the chamber  
14 under his seat. They were looking for a vehicle that was  
15 suspected in a robbery, they, the police; and they found  
16 the defendant in it. There's no indication in the record  
17 that the defendant was engaged in any robbery, but he did  
18 unlawfully possess the handgun. It was a misdemeanor, a  
19 fine and a weapons forfeiture.

20 At 18, he was also guilty of theft of property  
21 and at 21, possession of a controlled substance and  
22 unlawful possession of a weapon. That's the case where  
23 his probation was revoked and he was -- but ultimately the  
24 revocation was dismissed after about most likely eight or  
25 nine months.

1                   There's another instance of unlawful possession  
2 of a weapon, and he was guilty of sale of marijuana and  
3 reckless endangerment. That's all set out in paragraph 45  
4 of the presentence report.

5                   He recklessly engaged in conduct that placed or  
6 might have placed a bystander in imminent danger of death  
7 or serious bodily injury committed with a motor vehicle.  
8 That's the case where Mr. Harness refused to stop and  
9 finally stopped at -- was stopped at gunpoint and he had a  
10 quarter of a pound of marijuana.

11                  So, the criminal history total is five.  
12 Mr. Harness is in Criminal History Category III. That's a  
13 significant criminal history.

14                  Mr. Bell makes the point -- and it's  
15 well-taken -- that from 2002 until 2010 when he committed  
16 this offense that Mr. Harness managed to stay out of  
17 trouble. He apparently lived a law-abiding life. He  
18 turned his life around to some extent. He started trying  
19 to take classes. In fact, he took classes. He went to  
20 work. He got a record contract. He attempted to deal  
21 with his drug addiction with some success; and then, as  
22 they say, he fell off the wagon.

23                  That seems to have happened with this case. It  
24 happened earlier than this case because he didn't just  
25 fall into this situation; but by the relevant dates here

1 in March of 2010, Mr. Harness was actively engaged in  
2 purchasing and selling Oxycontin.

3                   There are two categories of people I see who  
4 are drug dealers. That's something of an  
5 oversimplification, but there's one group of people for  
6 whom it's a business. It's like getting up every morning  
7 and going to the office. They don't have any personal  
8 relationship with drugs beyond buying and selling them.

9                   There are other people whose involvement with  
10 drugs arises from their own addiction and, in part,  
11 they're buying and selling drugs to feed their addiction  
12 and that's what's happening here. Mr. Harness was himself  
13 addicted to Oxycontin, and part of the reason he was  
14 buying and selling these drugs was to feed his own  
15 addiction.

16                   One sees it relatively often. Sometimes people  
17 try to begin at a low level or they do begin at a low  
18 level and it just gets out of control and that may be what  
19 happened here.

20                   Mr. Harness is, as I say, 31 years old. He was  
21 11 when his father committed suicide. His mother  
22 fundamentally reared him. He was in a single-parent  
23 household. He spent a good bit of time alone in his home  
24 as his mother was gone. He has siblings including.

25                   He had something of a difficult childhood. His

1 childhood was, I would say, less difficult -- it's hard to  
2 quantify these things -- less difficult than most people I  
3 sentence. Let's put it that way. He had more  
4 opportunities than many people I sentence who grow up on  
5 the streets and have nothing. They don't have any  
6 parents. They don't have fathers or mothers or sometimes  
7 even grandparents. They live their lives in a gang  
8 environment and begin selling drugs at an early age.

9                   Mr. Harness did begin crime at an early age but  
10 he is -- his situation was better than many people I see.  
11 I'm not saying his situation was good. Obviously, it  
12 wasn't.

13                   He's married. He has three children by his  
14 present wife. He had two children with Ms. Hayes. His  
15 present wife, Ms. Candace Harness, has spoken today, as  
16 has the mother of two of his five children, Ms. Stephanie  
17 Hayes. They've both spoken very highly of Mr. Harness  
18 about his abilities as a parent and as a husband and as a  
19 good person.

20                   And I've also heard from Mr. DeFord who is  
21 Mr. Harness' friend for many years.

22                   I've read a number of letters which are  
23 attached to Mr. Bell's filing. I've read all of the  
24 things that were submitted to me. Some are more  
25 persuasive than others, but I think it's fair to say that

1 no one who knows Mr. Harness or at least no one who knows  
2 Mr. Harness who's come forward doesn't believe that  
3 Mr. Harness is a good human being who's made an effort and  
4 who's been a good parent and a good spouse.

5 Mr. Harness is apparently in good health. He's  
6 made some efforts recently to improve his health through  
7 diet and exercise and has lost substantial weight.

8 There is some evidence of Posttraumatic Stress  
9 Disorder from 2001. There's nothing since that indicates  
10 any evaluation or any treatment.

11 He did complete, as Mr. Bell has pointed out, a  
12 domestic violence program for perpetrators.

13 There's a long history of substance abuse here.  
14 Mr. Harness began drinking alcohol when he was 12. He  
15 started smoking marijuana when he was 10 and smoked daily  
16 until he was 22. He used cocaine for several years and  
17 then he began using pills -- Oxycodone, Hydrocodone, and  
18 Xanax -- around the time he was 20 and he was taking pills  
19 every day.

20 He did maintain his sobriety apparently from a  
21 period between 2001 and 2006. He has apparently a  
22 successful musical career and is a talented musician. His  
23 musical career, however, appears to have been partly  
24 responsible for his return to illegal substances which is  
25 very unfortunate.

1                    Apparently, Mr. Harness completed a treatment  
2 program at New Avenues in 2001 and 2002. He worked with  
3 the Alcoholics Anonymous 12-step recovery program. He  
4 managed to maintain his sobriety for a long time and then  
5 he relapsed and when he relapsed, he became involved again  
6 in criminal activity.

7                    Mr. Harness dropped out of school. Apparently  
8 he's an intelligent, capable person. He got his GED.  
9 He's a cook and, as I say, a musician. He has a history  
10 of recording contracts on several occasions and has been  
11 able to make some money from his recording career and from  
12 his musical career, although it's not enough to, I  
13 suspect, support five children. There have been periods  
14 of unemployment and employment in other capacities as a  
15 kitchen manager, as a chef apprentice at the Bluegrass  
16 country club which I assume is ironically named.

17                   So, there's good here; and there's bad here  
18 like most people. Unfortunately, the crime is a serious  
19 one.

20                   Since he's been on pretrial release, the report  
21 at Document 50 dated January 24th, 2012, states that  
22 Mr. Harness has been compliant as to his reporting and  
23 that his drug screens have been negative. He's also  
24 attended outpatient substance abuse treatment at  
25 Cornerstone. Unfortunately, he was arrested and indicted

1 for additional criminal activity during this same period.

2                   Mr. Bell argues that Mr. Harness is more than a  
3 perpetrator of a crime. I understand that. I've  
4 sentenced hundreds and perhaps thousands of people and I  
5 understand that people who come before me are human beings  
6 and they're not just statistics or numbers or labels but  
7 the commission of a crime, especially a crime of this  
8 magnitude, is a powerful thing. I don't sentence evil  
9 people. I've said this many times. When you do this as  
10 long as I have, you learn about people; and there aren't  
11 many evil people in the world. There are good people who  
12 do stupid things, and that's what we have here.

13                   Mr. Harness is a good person, and he's made a  
14 series of terrible choices in his life. He's made some  
15 good choices in his life but he's made some terrible  
16 choices and bad choices have consequences. They not only  
17 have consequences for you, they have consequences for  
18 people you love. I've said also many times I don't  
19 sentence only a defendant, I sentence a family because the  
20 family feels the consequences often in ways more  
21 significant than the defendant, particularly children.

22                   So, I have a very serious crime in which  
23 Mr. Harness was centrally involved. There's a strong need  
24 for deterrence because people who distribute illegal  
25 substances are pouring poison into the community.

1                   Is there a need to protect the public from  
2 Mr. Harness? That's a difficult question on this record.  
3 I think Mr. Harness wants to be a good, law-abiding  
4 citizen. He has the capacity to do that, but whether he  
5 can do it and will do it is part of him. He's the only  
6 person who can decide. He's had the opportunity several  
7 times to do that and has not done it. He had the  
8 opportunity over a period of five years where he was  
9 apparently a good and productive citizen and then became  
10 involved in this criminal activity.

11                   So, there is a need to protect the public here,  
12 although I think Mr. Harness truly wants to do better and  
13 has given an example of his effort and his ability to do  
14 better, but drugs are powerful things and Mr. Harness has  
15 a long history of addiction to multiple substances. It's  
16 not easy to stop, and this case demonstrates that.

17                   Can Mr. Harness benefit from incarceration? To  
18 some extent he can. He certainly needs drug treatment in  
19 a stable environment but, otherwise, probably not. He  
20 already has his GED. He has skills. He's a talented  
21 musician. I assume he's a talented musician. My musical  
22 taste is very limited. So, I'm really not able to judge  
23 whether he's a talented musician; but certainly other  
24 people in the business which he's chosen believe he's a  
25 talented musician. Based on me review of his supporting

1 e-mails and letters, he has a substantial fan base; and I  
2 assume there are people out there who have good taste in  
3 music who understand these things that I don't understand.

4                   What about the guidelines? They seem to work  
5 on the face here, the case. They recognize the  
6 seriousness of the offense. They recognize the criminal  
7 history. They recognize the acceptance of responsibility.  
8 They never recognize the human being before one and they  
9 simply don't but they seem to work here and they seem to  
10 promote uniformity but I think a low-end sentence is the  
11 appropriate sentence.

12                   I have some concern about the guidelines, but  
13 this is clearly a case for incarceration. This is not a  
14 case for probation or time served or anything such as that  
15 because of the seriousness of the offense and the need for  
16 deterrence. I'm mildly concerned that the low end's a  
17 little high, but I certainly would not go above the low  
18 end in sentencing.

19                   Anything else you want to say, Mr. Bell, before  
20 we proceed?

21                   MR. BELL: Your Honor, we understand the  
22 Court's position and we would ask, as I stated earlier, we  
23 would ask for a variance based on the factors we've set  
24 forward so far and just ask your Honor to take that into  
25 consideration but we understand that the Court has settled

1 on an incarceration sentence.

2                   We also would ask that as any part of that  
3 incarceration sentence that your Honor do recommend that  
4 Mr. Harness go to the 500-hour drug program. He seems  
5 like a good case for that type of thing.

6                   THE COURT: He needs that program and can  
7 benefit from that program. I will recommend him for that  
8 program.

9                   Anything else you want to say, Mr. Kitchen?

10                  MR. KITCHEN: I agree with the 57 months, your  
11 Honor.

12                  THE COURT: All right. Well, that's what I'm  
13 going to do. I think a low-end sentence is appropriate  
14 because of Mr. Harness' efforts and because of his -- the  
15 interruption in his treatment which indicates to me he's  
16 made an effort but the effort was inadequate.

17                  Fifty-seven months; three years supervised  
18 release; no fine based on inability to pay and the length  
19 of the sentence; no restitution; mandatory special  
20 assessment of \$100.

21                  As conditions of supervised release,  
22 Mr. Harness needs to cooperate in the collection of DNA as  
23 directed by his probation officer.

24                  He needs to cooperate in drug testing and  
25 treatment as directed by his probation officer.

1                   He needs to cooperate in mental health  
2 treatment as directed by his probation officer.

3                   And he needs to maintain lawful, full-time  
4 employment.

5                   I will recommend Mr. Harness for the 500-Hour  
6 Drug Treatment Program; and I will recommend that  
7 Mr. Harness be placed as close to his family in Nashville,  
8 Tennessee, as possible or at least in the Nashville area.

9                   Mr. Harness, this is a difficult sentence; and  
10 it's difficult for me as a judge to impose it. It's  
11 difficult for me to impose any sentence, but it's  
12 particularly difficult for me because there's a disconnect  
13 between this crime and the kind of person you are.

14                   I understand you're a good person. All these  
15 people wouldn't be here if you weren't. I understand  
16 you're a good husband and a good father but I have another  
17 job, too, and that's to protect society and protect the  
18 public.

19                   The crime here is so serious that I can't  
20 simply pass over it, but you're a young man. You have a  
21 long future ahead of you. You've shown in the past that  
22 you can overcome these problems. You can overcome this  
23 problem. I believe it absolutely. It's up to you to do  
24 that. No one can do it for you. You certainly have every  
25 incentive to do it with five children who are dependent on

1 you.

2 So, I wish you well. I think you can leave and  
3 become a good citizen, and I certainly hope you'll have a  
4 great career.

5 Is there anything else, Mr. Bell?

6 MR. BELL: No, your Honor.

7 MR. KITCHEN: No, your Honor.

8 THE COURT: Mr. Kitchen.

9 Thank you very much. You're excused.

10 MR. BELL: Your Honor, I am --

11 THE COURT: Oh, he has the right to appeal.

12 Mr. Harness, you have the right to appeal your  
13 sentence. You have the right to apply for leave to appeal  
14 in forma pauperis. Ms. Lee is going to hand the appeal  
15 papers to Mr. Bell so that you can take an appeal if you  
16 want to. In forma pauperis just means you do not have to  
17 pay to appeal.

18 Is there anything I haven't considered,  
19 Mr. Bell, that you have -- anything you haven't already  
20 argued that I haven't considered?

21 MR. BELL: No, your Honor. Through the  
22 position paper and what we've talked about so far I have.

23 I did want --

24 THE COURT: Have I addressed everything you  
25 want me to address?

1 MR. BELL: Yes, you have.

2 THE COURT: Mr. Kitchen?

3 MR. KITCHEN: You did, your Honor. Thank you.

4 MR. BELL: I am asking -- I want to submit the  
5 to the Court we had a number of different DVDs. I wanted  
6 to make a part of the record the DVD we played. I have  
7 submitted that to the Court as one of the exhibits.

8 THE COURT: You're not submitting anything you  
9 haven't played.

10 MR. BELL: No, that's the same one. It's just  
11 a copy of it.

12 THE COURT: All right. That will be made  
13 collective -- well, that will be made Exhibit 1 to these  
14 proceedings without objection.

15 (Exhibit No. 1 was received. Description:  
16 DVD.)

17 MR. BELL: Yes.

18 THE COURT: Now, I'm assuming that your letters  
19 are also part of the record.

20 MR. BELL: That's right. That's --

21 THE COURT: And they were attached to your  
22 position which is filed in Document 49, and the letters  
23 should be filed at 49-1 for the record.

24 MR. BELL: That's right.

25 THE COURT: All right. Mr. Bell, do you know

1 of any reason, other than any reason you've already  
2 argued, why the sentence should not be imposed as stated?

3 MR. BELL: No, your Honor.

4 THE COURT: Probation.

5 MR. KITCHEN: No, your Honor.

6 PROBATION OFFICER: No, your Honor.

7 THE COURT: Mr. Kitchen?

8 MR. KITCHEN: No, your Honor.

9 THE COURT: Thank you.

10 The Court will impose the sentence as stated.

11 You have the right to appeal. Thank you,

12 Mr. Harness.

13 COURTROOM DEPUTY: Do you move to dismiss  
14 Count Two?

15 MR. KITCHEN: I apologize. I do move to  
16 dismiss any remaining counts, your Honor.

17 THE COURT: Count Two is dismissed on motion of  
18 the Government.

19 Anything else?

20 MR. BELL: No, your Honor. Thank you.

21 MR. KITCHEN: Thank you for reminding me.

22 THE COURT: Thank you.

23 Do you have anything else, Mr. Bell?

24 MR. BELL: Thank you, your Honor.

25 THE COURT: Thank you.

1 (Whereupon the proceedings adjourned.)  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, Nicole M. Warren, RMR, CRR, do hereby certify that the foregoing pages are unredacted and to the best of my knowledge, skill, and ability are a true and accurate transcript from my stenotype notes of the Sentencing Hearing on January 26, 2012, in the matter of:

United States of America vs. William Harness.

Dated this 26th day of January, 2012.

Nicole M. Warren, RMR, CRR  
Official Court Reporter  
United States District Court  
Western District of Tennessee